IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 52

DAN TEHAN, SHERIFF OF HAMILTON COUNTY, OHIO,
Petitioner,

v.

UNITED STATES OF AMERICA, ex rel. EDGAR I. SHOTT, JR.,
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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DATED: MARCH 2, 1965

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 877

DAN TEHAN, SHERIFF OF HAMILTON COUNTY, OHIO,
Petitioner,

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Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

STATEMENT

Respondent asserts that this Court should deny the instant Petition for Certiorari for the following reasons:

1. The opinion of the Sixth Circuit, 337 F.2d 990, properly interprets this Court's opinion in *Malloy* v. *Hogan,* 378 U.S. 1 (1964), which held that the Fifth Amendment privilege against compulsory self-incrimination is protected by the Fourteenth Amendment

against abridgment by the states. As the Sixth Circuit held, this constitutional protection necessarily includes not only:

> "the right to refuse to answer incriminating questions, but also the right that such refusal shall not be commented upon by counsel for the prosecution." (377 F.2d at 991)

This holding accords with the consistent line of precedents in federal courts that the right of self-incrimination requires that the prosecutor refrain from commenting on a defendant's failure to testify. *Wilson* v. *United States,* 149 U.S. 60 (1893); *De Luna* v. *United States,* 308 F.2d 140, 142-143, 154 (5th Cir. 1962); *United States* v. *Ragland,* 306 F.2d 732, 736 (4th Cir. 1962), *cert. denied,* 371 U.S. 949; *Ing* v. *United States,* 278 F.2d 362, 367 (9th Cir. 1960). *See also, Johnson* v. *United States,* 318 U.S. 189 (1943); *McKnight* v. *United States,* 115 Fed. 972, 982 (6th Cir. 1902).

2. Contrary to Petitioner's assertions, nothing in the case of *Griffin* v. *California,* No. 202, in which certiorari has been granted, even vaguely relates to the question Petitioner presents.

3. It is specious to claim, as does Petitioner in presenting its "main contention," that Respondent "waived" his constitutional rights against self-incrimination. This is the first time in this protracted proceeding that this obviously groundless claim has been made. Nothing in the trial of this case even remotely suggests that Respondent has impliedly waived his constitutional rights.

It is fully apparent that the judgment and opinion of the Court of Appeals properly interprets this

Court's holding in *Malloy* v. *Hogan*. The petition for certiorari should be denied.

Respectfully submitted

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